

# Employment Law Summary

## Workers' Compensation Laws – Employer Responsibilities



*Because You're Different*

Workers' compensation is a system of no-fault insurance that provides monetary compensation and medical benefits to employees or their survivors for work-related injuries, diseases and deaths. Workers' compensation is governed by state law.

The Hawaii Workers' Compensation Law (WCL) establishes employer responsibilities relating to workers' compensation in the state. The [Hawaii Department of Labor and Industrial Relations](#) (DLIR) administers the workers' compensation system and enforces employer responsibilities under the WCL.

### EMPLOYERS SUBJECT TO THE WCL

An employer is subject to the WCL if it has **one or more employees** working in Hawaii. The WCL defines an employee as any individual in the employment of another person. The law's definition of "employment" includes any service performed by an individual for another person under any contract of hire or apprenticeship. Employment contracts may be express or implied, and the WCL applies even if a person's employment is not legal.

### COVERAGE REQUIREMENTS

The WCL requires employers to maintain adequate workers' compensation coverage for their employees. Employers may satisfy the WCL's coverage requirement by either:

- Purchasing an insurance policy from an authorized workers' compensation insurance company; or
- Obtaining the DLIR's approval to self-insure, either individually or as part of a group.

Regardless of how the coverage requirement is met, the WCL prohibits employers from making their employees pay for any part of their workers' compensation coverage.

An employer that fails to provide coverage as required may be subject to several penalties, including fines that are determined by the number of its employees and the number of days it remains without coverage. A noncompliant employer may also be subject to stop-work orders as well as lawsuits for damages by injured employees.

### EXCLUSIONS AND VOLUNTARY COVERAGE

The WCL excludes certain types of employment from the mandatory coverage requirement. This means an employer is not subject to the WCL in relation to employees who work in any of the excluded employment types. However, employers may voluntarily elect to become subject to the WCL in relation to any of these individuals. In general, individuals for whom an employer is **not** required to but may provide workers' compensation coverage include:

- Sole proprietors;
- Voluntary or unpaid workers for a religious, charitable, education or nonprofit organization;
- Student workers performing services for a school, university or college club in return for room, board or tuition;
- Certain religious clergy members;
- Domestic workers earning less than \$225 per calendar quarter;

- Domestic workers who provide services under certain federal programs;
- Certain 25% corporate stockholders, all 50% corporate stockholders and all limited liability company members who have a distributional or transferable interest of at least 50%;
- Partners of a partnership; and
- Real estate salespersons and brokers paid solely on a commission basis.

## INSURANCE POLICIES

Employers that obtain a workers' compensation policy through an insurance carrier must file a copy of the policy with the DLIR or provide other written evidence of WCL compliance. The DLIR may also accept the notice of employer's insurance from approved third-party agencies.

When purchasing an insurance policy in Hawaii, employers have the option of including a deductible for medical benefits. Insurance companies are required to fully disclose all offered deductible amounts in writing before they complete the sale of a policy. Although a deductible can help reduce premium costs, an employer that includes one in its policy must be prepared to cover the deductible amount for each workplace injury that may occur. Insurance providers are required to pay the deductible amounts up front when an injured employee is entitled to receive benefits under the WCL, but the employer is responsible for reimbursing the deductible amount for every compensable injury.

## SELF-INSURANCE

A self-insured employer uses its own assets rather than an insurance policy to insure against its obligations under the WCL. Employers that wish to self-insure must apply for and obtain authorization from the DLIR. If the DLIR approves an application, the employer is authorized to self-insure from the date of issuance until June 30 of each calendar year.

To become self-insured in Hawaii, employers must provide proof of solvency and financial ability to cover all obligations and meet certain requirements under the law. Once an employer provides all the required information and its application is approved, the DLIR will issue a self-insurance authorization effective from the date it is issued until June 30 of each calendar year.

## NOTICE POSTING REQUIREMENTS

All employers must post and maintain printed notices regarding their workers' compensation coverage in each workplace where their covered employees work. The notice must be displayed in a place that is readily accessible to all employees. Employers are responsible for keeping the notices current and revising them each time a new workers' compensation policy or self-insured authorization is issued.

## INJURY REPORTING REQUIREMENTS

When an employee reports a work-related injury, the employer must:

- **Immediately** provide the injured employee with the name and address of its insurance carrier and the employer's policy number and expiration date (if applicable);
- Provide the employee with a copy of the brochure titled "Highlights of the Hawaii Workers' Compensation Law" **within three working days**; and
- Report the injury to its insurance carrier (if applicable) and to the DLIR **within seven working days** using the [Employer's Report of Industrial Injury form](#).

## SUITABLE WORK

If a work-related injury disables an employee from performing their customary or most recent work, the employer must transfer the employee to full-time work suitable to the employee's physical condition. This requirement applies throughout the time the employee is under medical treatment or rehabilitation for a work-related injury or disease.

## RETURN TO WORK REQUIREMENTS

Under the WCL, it is unlawful for an employer to suspend or discharge an employee solely because the employee sustained a work-related injury unless the DLIR finds that:

- The employee will no longer be capable of performing the same work as a result of the work injury; and
- The employer has no other available work that the employee is capable of performing.

If an employee is suspended or discharged because of a work injury, they must be given first preference of reemployment by the employer in any position that becomes available after the suspension or discharge that the employee is physically capable of performing. This employment must continue until the employee secures new employment.

## ADDITIONAL RESPONSIBILITIES

In addition to the requirements summarized above and others, employers subject to the WCL must:

- Provide proof of compliance with coverage requirements upon the DLIR's request;
- Allow the DLIR and its authorized representatives to enter and inspect all places of employment and all records pertaining to employment, payroll and injuries at any reasonable time;
- Provide copies of medical reports to injured employees upon their request; and
- Pay benefits pursuant to an award or settlement approval issued by the DLIR within 20 days of the DLIR's order (unless a timely appeal is filed).

## MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the DLIR [website](#) for more information on workers' compensation laws in Hawaii.